

MINUTES FOR THE BOARD OF ADJUSTMENT SPECIAL MEETING

September 9, 2011

- I. **ATTENDANCE** - The Chairman called the special meeting to order at 2:02 p.m. in the Council Chambers, 200 East Main Street, on September 9, 2011. Members present were Chairman Louis Stout, Barry Stumbo, James Griggs, Thomas Glover and Kathryn Moore. Members absent were Noel White and Jan Meyer. Others present were Mark Newberg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Bill Sallee, Jim Marx, Barbara Rackers and Wanda Howard.

Chairman Stout explained that today's special meeting was being held due to the lack of a quorum for the regularly scheduled Board of Adjustment meeting in August. He subsequently asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced (at the end of the meeting) that the minutes of the July 25, 2008; July 29, 2011 and August 26, 2011 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (White, Meyer absent) to approve the minutes of the July 25, 2008; July 29, 2011; and August 26, 2011 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2011-29: STEPHEN HOWARD** - appeals for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural-Rural (A-R) zone, on property located at 3497 North Cleveland Road. (Council District 12)

The Staff Recommends: Postponement, for the following reasons:

1. The appellant has indicated a desire to meet with the staff to get a better understanding of what project revisions could be pursued that would result in a finding that the event facility proposed can be considered as clearly incidental and subordinate to the winery operation that is to be established.
2. Should the conditional use application be revised, additional time will be required to review whether the proposed event facility (as revised) will adversely impact any surrounding properties.

Representation – Mr. Richard Murphy, attorney, was present to request an indefinite postponement of the subject appeal.

Mr. Stumbo noted that he was unfamiliar with an indefinite postponement and asked about the timetable for such a request. Mr. Sallee responded that there really isn't a timetable for an indefinite postponement; and that the case will remain postponed until such time as the applicant asks that it be brought back to the Board, if that ever happens. He said it would then be treated as a new case, with new notice being provided to the surrounding property owners.

Mr. Stumbo then asked Mr. Murphy when his client anticipated bringing this case back to the Board. Mr. Murphy answered that the reason for this request was because the Mayor had appointed a task force to study the winery issue, and they wanted to let this process go on to completion; however, they didn't know how long this process was going to take. He concurred with Mr. Sallee that, if they do come back, the surrounding neighbors will be re-notified.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously (White, Meyer absent) to indefinitely postpone **C-2011-29: STEPHEN HOWARD** (a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural-Rural [A-R] zone on property located at 3497 North Cleveland Road).

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2011-54: S.F. DAWAHARE LTD. PARTNERSHIP** - appeals for a variance to reduce the required front setback from 20 feet to 8 feet to allow temporary outside tenants to locate adjacent to the curb in a shopping center parking lot, in a Neighborhood Business (B-1) zone, on property located at 1801 Alexandria Drive. (Council District 11)

The Staff Recommends: Approval, for the following reasons:

1. A front setback reduction from 20' to 8' for this seasonal use should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. Comparable uses are common in shopping centers in Lexington, and public safety will be protected by restricting the movement of vehicles in the immediate vicinity of the tented area.
2. The layout of the existing parking lot and seasonal nature of the use are special circumstances that contribute to justifying some reduction of the front setback.
3. Strict application of the Zoning Ordinance would force the tented area to be located at an undesirable site where a number of otherwise available parking spaces would be lost.
4. The appellant is making a reasonable effort to accommodate outdoor tenants in the least disruptive manner possible.

This recommendation of approval is made subject to the following conditions:

1. The tented area shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of Board action.
3. Cones or other highly visible comparable materials shall be used to block the traffic aisle in the immediate vicinity of the tented area, in accordance with the recommendations of the Division of Traffic Engineering.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Mr. Joe Dawahare was present for this appeal. He indicated that he had read, understood and agreed to abide by the conditions. With regard to Condition #3, he asked for clarification about the placement of the (traffic) cones. Mr. Marx responded that the cones were recommended by Traffic Engineering to direct traffic around the area where the tents are set up. He requested that the site plan be displayed on the overhead and pointed out the area in the parking lot along Alexandria Drive where the tents will be located in relation to the cones. He said the purpose of the cones was to prevent vehicles from going through the traffic aisle adjacent to the tents.

Chairman Stout asked when the cones would be put up. Mr. Dawahare replied probably by the following Monday. Chairman Stout then asked how many tents there are on the site. Mr.

Dawahare responded that there was more than one tent, which he described as more like an awning instead of being enclosed, where vegetables and fruit would be sold. He said the main purpose of the variance was to make sure that the drive aisle wouldn't be obstructed; and that based on the recommendation he heard for placing the cones, the staff wanted that area to be blocked off. Mr. Marx responded that was correct, citing a public safety issue. He said they didn't think it was a good idea to have vehicles going through the area as people are wandering about the sales area.

Chairman Stout asked if this would be a hindrance to the people trying to find parking. Mr. Marx responded that it shouldn't be a problem because there were other alternative routes available for people to get to parking areas.

Mr. Dawahare asked whether, in the case of a double lane, they would have to block off one lane or the whole thing. Mr. Gallimore said he thought the intent basically was to avoid having a number of pedestrians mixing with vehicular traffic, citing an example of some other areas where a Farmers' Market is located. He went on to say that, due to the layout of the parking lot, access is not really being cut off to any properties, and there still would be parking close by. He felt it was really just the area in front of the booths that should be blocked off from vehicular traffic.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (White, Meyer absent) to approve **V-2011-54: S. F. DAWAHARE LTD. PARTNERSHIP** (a variance to reduce the required front setback from 20 feet to 8 feet to allow temporary outside tenants to locate adjacent to the curb in a shopping center parking lot, in a Neighborhood Business [B-1] zone on property located at 1801 Alexandria Drive) based on the staff's recommendation of approval and subject to the three conditions.

- b. **A-2011-51: DR. GARY B. KNAPP / MONTICULE, LLC** - appeals for an administrative review to allow more than one kitchen in a single-family dwelling, in the Agricultural-Rural (A-R) zone, on property located at 977 Harp Innis Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

1. In Article 1-11 of the Zoning Ordinance, the consideration of the definitions of "housekeeping unit" and "kitchen facilities" work in harmony to define a dwelling unit so that the presence of multiple kitchens would indicate multiple dwelling units. In this instance, the floor plans of the subject structure indicate that the kitchen facilities are not intended for, or conducive to, having separate dwelling units. As such, there is a reasonable expectation that a single housekeeping unit will be occupying the dwelling, with no circumvention of the intent of the Zoning Ordinance.
2. The subject structure is clearly designed as, and was permitted for, use as a single dwelling unit. Given the overall size of the structure and diversity of activities to take place there, it is reasonable to characterize the kitchen facilities as amenities that are accessory to a single living unit.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Mr. Jeremy Clements was present on the appellant's behalf.

Chairman Stout noted that the staff had recommended approval of this appeal, without any conditions. He asked if the Board had any questions or concerns.

Ms. Moore related her understanding of the way the ordinance is written, stating that it does not expressly limit any single-family dwelling to a single kitchen; but, the ordinance does limit one kitchen facility to a single housekeeping unit. She asked if this is just an interpretation that Building Inspection has regularly had that you can only have one kitchen in order to limit it. Mr. Marx said he thought that was generally true; and that the kitchen issue is kind of used as an indicator of what the intent is for a particular structure. He went on to say that is why staff goes through an assessment of the floor plan and what the reasoning is behind having more than one kitchen, to see if there is any intent to have more than one living unit. In this case, the answer was clearly no.

Action – a motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (White, Meyer absent) to approve **A-2011-51: DR. GARY B. KNAPP / MONTICULE, LLC** (an administrative review to allow more than one kitchen in a single-family dwelling in the Agricultural-Rural [A-R] zone on property located at 977 Harp Innis Road) as recommended by the staff.

- c. **A-2011-52: DR. STAN FERGUSON** - appeals for an administrative review to allow signage on a building wall with no street frontage, in a Professional Office (P-1) zone, on property located at 2517 Sir Barton Way. (Council District 6)

The Staff Recommends: Approval, for the following reasons:

1. The number and size of wall signs permitted at this location by Article 17-7(e)1 of the Zoning Ordinance will not be exceeded.
2. Although not directly oriented to Sir Barton Way, the proposed sign will be highly visible from that street, and can be placed at the desired location without adversely affecting the adjoining property or the Sir Barton Way streetscape.

This recommendation of approval is made subject to the following conditions:

1. A wall sign not exceeding 5% of the wall area may be placed on the southerly building wall.
2. A sign permit shall be obtained from the Division of Building Inspection prior to placement of the sign on the building.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Dr. Stan Ferguson, appellant, was present. In response to the Chairman, he indicated that he had read, understood and would abide by the conditions for approval. He asked whether it would be necessary to re-submit the sign permit application to Mr. Walker in Building Inspection. Mr. Marx responded that was correct, noting that Dr. Ferguson would need to coordinate with Mr. Walker. Mr. Newberg concurred.

Action – A motion was made by Mr. Glover, seconded by Mr. Stumbo, and carried unanimously (White, Meyer absent) to approve **A-2011-52: DR. STAN FERGUSON** (an administrative review to allow signage on a building wall with no street frontage in a Professional Office [P-1] zone on property located at 2517 Sir Barton Way) based on the staff's recommendation and subject to the two conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

None Remaining

D. **Conditional Use Appeals**

None Remaining

E. **Administrative Reviews**

1. **A-2011-53: MANUEL HERNANDEZ** - appeals for an administrative review to allow a banquet facility in a building not currently or formerly used as a residence, in a Neighborhood Business (B-1) zone, on property located at 1449 Alexandria Drive. (Council District 11)

The Staff Recommends: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The proposed banquet facility is to be located in a commercial building that is not and has not been used for residential purposes, which would be contrary to the provisions and limitations of Article 1-11 of the Zoning Ordinance.
- b. Compelling arguments have not been provided by the appellant to indicate or otherwise support that a stand-alone banquet facility, in a building that is not and has not been used for residential purposes, is intended by the Zoning Ordinance to be permitted as a principal use in the Neighborhood Business (B-1) zone.

Representation – Mr. Manuel Hernandez, appellant, was present. He said he wanted to have this facility but didn't know what to do at this point, given the staff's recommendation of disapproval.

Staff Report - Mr. Marx said this appeal resulted from the Zoning Ordinance's definition of a banquet facility, which was shown on the overhead projector. He said the subject property is in a Neighborhood Business (B-1) zone, which does allow a banquet facility as a principal permitted use; however, in the definition, reference is made to a building currently or formerly used as a residence. He said the commercial building on the subject property does not comply with that requirement.

Chairman Stout asked whether the appellant was familiar with the regulation in question. Mr. Hernandez responded no, but that he now had a better understanding of the regulation.

Mr. Glover commented that, even after reading the definition, he wasn't sure he understood what a banquet facility is. Mr. Saltee said he thought it was mostly designed for social events and meetings, to differentiate it from a restaurant or private club, for example. He thought some of the uses that a private club would have are probably similar to what would be expected in a banquet facility, such as receptions, civic organization meetings, etc. He said this text amendment was proposed to differentiate that type of use from a restaurant or a private club, where there are more accessory and ancillary parts of their operation.

Mr. Glover asked if there are fewer requirements on a banquet facility than a restaurant, for example. Mr. Saltee said there aren't, from a local permitting standpoint. Mr. Glover then asked if the use would be temporary. Mr. Saltee responded that he didn't know that the use would be temporary as much as the events would be temporary, as compared to a restaurant or private club that have more consistent daily operations.

Appellant's Presentation - Mr. Hernandez commented that the proposed banquet facility would operate only on the weekend, for a maximum of around 120 people. He said he had received several requests for a place to hold private receptions, banquets, cotillions, etc., which was the reason for this appeal. It was noted that a nightclub formerly operated in this space.

Discussion - Mr. Stumbo asked what was next door, in the space at 1425 Alexandria Drive and on the other side, at 1485 Alexandria Drive. Mr. Hernandez replied that restaurants are located at both of those addresses. In addition, there is a computer store at 1435 Alexandria; a clothing store at 1439 Alexandria; and a bakery at 1465 Alexandria.

Ms. Moore asked staff if there was anywhere in that area where a banquet facility could be located, given the comment regarding a need for this use. Mr. Hernandez responded that he knew of one such facility at 1700 Alexandria. Mr. Saltee said there are a few former residences that now have business zoning on Alexandria, but he guessed there were less than a half-dozen properties in this area that would fit that condition.

Chairman Stout asked about the difference between the restaurant/bar uses in the area and the use the appellant was requesting. Mr. Marx said he thought the main part of the distinction comes down to the type of other activities that happen there, especially in terms of the noise impact from live entertainment being offered. He said, in a B-1 zone, even a restaurant that has live entertainment has to go to the Board as a conditional use, as well as a cocktail lounge or bar. Referring to the definition of a banquet facility, he said if the residential use part is met, live entertainment can be offered; however, it's in a very restrictive setting.

Mr. Glover responded that although this made no sense and he didn't understand it, the Board probably was bound by the definition.

Mr. Griggs said it was alluded to in the staff report that the argument against this request for a banquet facility was text related, not logic related. Mr. Marx responded that this was how the Urban County Council decided to approve it. He asked for Ms. Boland's comment.

Ms. Boland said she thought there was an inherent difference in the intensity of a banquet facility, such as the Carrick House with its vast size and the tremendous number of people drawn to a single event who are all there at the same time, unlike the turnover in a restaurant. She noted that there are other zones where an intense use such as a banquet facility may well be appropriate; but a Neighborhood Business (B-1) zone generally caters to smaller businesses that will fit in with the surrounding residential uses. She said it seemed that the restriction made sure that you could have some smaller banquet facilities if using an existing residence; but it prohibits someone from buying a piece of land and building a massive banquet facility in a B-1 zone, because it is not appropriate there. Ms. Boland said that perhaps a text amendment could be proposed to allow this use in an existing structure or a minor existing building that will also meet these limitations; but now, the only restriction in the Zoning Ordinance is it has to have been currently or formerly used as a residence or it is not appropriate in a B-1 zone. She said apparently, there was a decision made in the past that they didn't want unstructured banquet facilities in a B-1 zone.

Mr. Griggs commented that he personally agreed with what seemed to be the majority of the Board; and the fact that it is required to be an existing former residence doesn't seem to connect. He thought a banquet facility should be allowed in the B-1 zone as a conditional use, subject to limitations based on the particulars.

Referring to the staff report, Ms. Moore said it seemed that they expanded the definition to allow residences in order to preserve historic structures, which had nothing to do with whether it should be in a residence or not. Bell House was cited as an example. She concurred with Mr. Glover that the Board was bound by the ordinance the way it is currently written.

Chairman Stout felt this was an issue that needed to be addressed and asked if this was the Board's responsibility. Mr. Saltee responded that staff could certainly relay the Board's interest in this to the Planning Commission at an upcoming work session, especially if they felt this use should be reviewed as a conditional use in the B-1 zone.

Mr. Griggs commented that he also would like to see that issue reviewed. However, with that being said, Mr. Griggs wasn't sure he would be in favor of this building having a live music venue because of the proximity to the neighborhood. He made reference to the minutes from the LaBamba case in 2008 (which the Board would be considering for approval at this meeting) and noted a huge outpouring of opposition to a nightclub that offered live entertainment at this same property address.

Mr. Hernandez said he has been in this neighborhood for 11 years and owns most of the properties that Mr. Stumbo inquired about earlier. He spoke about the extensive efforts that have been made over the last five years to improve these properties, enhance the neighborhood, and to be a good neighbor, for which he has been commended by a number of people, including 11th District Councilmember Peggy

Henson.

Mr. Griggs reiterated the Board's recommendation for a review of the definition of a banquet facility by the Planning Commission, which could result in a text amendment that subsequently may allow Mr. Hernandez to come back to the Board with a new application for this use.

Chairman Stout asked if the Board's disapproval of this appeal would be a detriment to the applicant if he comes back and petitions for the same request. Ms. Boland opined that if there is a change in the Zoning Ordinance, then by its nature, Mr. Hernandez' application would be different. She said, in other words, if this text amendment was approved in less than 6 months, the applicant would be applying for, based on the Board's suggestion, a conditional use permit. This would be an inherently different appeal, and there would not be a time constraint.

Chairman Stout explained to the applicant that he felt the Board's hands were tied, in view of the current definition of a banquet facility.

Citizen Comment - Mr. Todd Strecker, President of the Lexington-Versailles Corridor Coalition and an area resident, was present to speak to this appeal. He said he was involved in the previous battle with LaBamba, which formerly operated on this property; and that he has observed the vast improvements Mr. Hernandez has made on his properties, which he feels are going in the right direction. He said Mr. Hernandez was doing an excellent job. He said, to his understanding, the applicant had no interest in offering live entertainment or selling alcoholic beverages or any of the things that were there before when the neighbors were in a battle royal to get rid of; but instead, he wanted to have a place where people could gather for birthday celebrations, dinners, etc. Therefore, he agreed that the ordinance should be changed to allow the applicant to have this facility, which would be compatible with the neighborhood. In addition, he said the Hispanic community needs this facility. In closing, Mr. Strecker said Mr. Hernandez is a good citizen and property owner, whom he supported and offered to help, as well as an attorney, to change the ordinance.

Discussion - Mr. Glover felt that a good argument has been made for a change to the text of the ordinance.

Mr. Marx said the applicant might have more flexibility if he was willing to withdraw this appeal, in terms of coming back to the Board. He said, based on what the applicant described, it may not be a banquet facility; but instead, something similar to another use in the current Zoning Ordinance.

Chairman Stout asked if the applicant preferred to have the Board make a decision on this appeal, or if he wished to withdraw it. Mr. Hernandez requested that the Board vote on this issue. However, Chairman Stout said a vote by the Board on this issue would not likely be in the applicant's favor, given this discussion.

For clarification, Ms. Moore asked if the Board voted to disapprove this appeal, and there was another category or use in the Zoning Ordinance that could accommodate the applicant, allowing him to come back with a conditional use, for example; if he would be time-barred for six months. Mr. Marx replied that the applicant would not be time barred, because it would be a new application. He explained to Mr. Hernandez that if he withdrew the appeal, he would have to wait six months to apply for the same thing; however, with a disapproval, he would have to wait a year.

Withdrawal - At this point, Mr. Hernandez said he wished to request a withdrawal of the administrative appeal, which the Board accepted. Mr. Marx said he felt this was the best decision. Chairman Stout said he hoped Mr. Hernandez would be able to get this worked out.

Chairman Stout asked staff how the Board could facilitate a review of this issue. Mr. Sallee responded that, based on the discussions today, the staff would take this matter to the Planning Commission at one of their work sessions, identify the use and the basic issue that came up at today's meeting. He said a staff report on the case would be provided, there would be a dialogue between the staff and the Commission members. Chairman Stout then asked if staff would take this case as an example. Mr. Sallee responded yes.

Ms. Moore suggested as an option that, rather than trying to change the definition involving a residence,

perhaps a new category could be created, since the applicant didn't want to have alcohol. She felt it would be helpful to have a category where you can have parties without alcohol.

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Mr. Griggs expressed his concern about the way multiple kitchens are handled, given the number of appeals that came to the Board for consideration. He said it seemed that the Board was making an exception several times a year, which he felt was based on affluence and the size of the buildings. Mr. Sallee responded that there have been two such appeals since the revision to the definitions for single-family dwelling and housekeeping unit. He said since these definitions have been in place for about a year-and-a half, it may not be a bad idea to review those as well. A few such cases, including the one the Board considered today, were cited and discussed briefly. Mr. Sallee subsequently said the Board was seeing those applications because Building Inspection is not permitting multiple kitchens, which warrants a review by the Board on a case-by-case basis.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

Mr. Sallee informed the Board of the upcoming series of audio conferences this fall. He said as soon as the schedule became available, it would be passed along to them.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be September 30, 2011.

- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:50 p.m.

Louis Stout, Chairman

James Griggs, Secretary